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MODERN ESCHEAT STATUTES DEALING WITH UNCLAIMED INTANGIBLE PERSONAL PROPERTY

Originally escheat applied only to real property,¹ but modern escheat statutes² have not distinguished this term from *bona vacantia*³ which applied only to personal property. Tangible personal property and real property have only one situs which is within the state where the property is physically located and that state alone has jurisdiction to escheat the property based on its physical power over the property.⁴ Because of the possibility of a plentiful source of non-tax revenue,⁵ many states have adopted statutes enabling them to escheat abandoned intangible personal property.⁶ This has caused a controversy over which state shall succeed in escheating property when more than one state has an interest in the intangible property. Because it is impossible to determine a geographical situs and the situs of intangible property is not the same for all purposes,⁷ the states have based their escheat power on different theories. In cases of unclaimed property held by corporations, the state of incorporation,⁸ the state where the corporation has its principal office,⁹ a state having the most "contacts",¹⁰ and the state of the creditor's last known address¹¹ have all attempted at different times to escheat the property.

MULTIPLE CLAIMS AND COURT SOLUTION

In *Standard Oil Co. v. New Jersey*¹² the state of New Jersey was allowed to escheat unclaimed dividends and shares of stock.

1. *E.g.*, *Anderson National Bank v. Lockett*, 321 U.S. 233 (1944); *In Re Melrose Ave.*, 234 N.Y. 48, 136 N.E. 235 (1922).

2. *E.g.*, MONT. REV. CODES ANN. § 91-502 (1964); N.D. CENT. CODE § 47-01-10 (1960); WASH. REV. CODE ANN. § 11.08.020 (1963).

3. See, *Origins and Developments of Modern Escheat*, 61 Colum. L. Rev. 1319 (1961).

4. *Texas v. New Jersey*, 379 U.S. 674 (1965).

5. Wall St. J., Jan. 22, 1962, p. 1, col. 1.

6. ALASKA STAT. § 09.50.070 (1962); CAL. ANN. CODE CIV. PROC. §§ 1500-27 (Supp. 1965); IDAHO CODE ANN. §§ 14-501 to -530 (Supp. 1965); ILL. ANN. STAT. ch. 141, §§ 101-30 (Smith-Hurd 1964); KY. REV. STAT. §§ 393.016 - .990 (1962); N.M. STAT. ANN. §§ 22-22-1 to -29 (Supp. 1965); N. D. CENT. CODE §§ 30-25-01 to 07, 54-01-01 to 02.3, 56-01-14 (1960), 6-08-24.1 (Supp. 1963); WASH. REV. CODE ANN. §§ 63.28.070 - .920 (1961); WYO. STAT. ANN. §§ 9-687, 688 (1957).

7. *E.g.*, *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *Estin v. Estin*, 334 U.S. 541 (1948); *Farmers Loan and Trust Co. v. Minn.*, 280 U.S. 204 (1930); *Severnoe Securities Corp. v. London & Lancashire Ins. Co.*, 255 N.Y. 120, 174 N.E. 299 (1931).

8. *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1950); *Anderson Natl. Bank v. Lockett*, 321 U.S. 233 (1944); *Security Savings Bank v. People of State of Calif.*, 263 U.S. 282 (1923).

9. *Texas v. New Jersey*, *supra* note 4, at 680.

10. *Cf. Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Columbia Broadcasting System Inc. v. Atkinson*, 49 Cal.2d 338, 316 P.2d 960, Cert. denied, 367 U.S. 569 (1958).

11. *Texas v. New Jersey*, *supra* note 4; *Metropolitan Life Ins. Co. v. Knight*, 210 F. Supp. 78 (S.D. Ill. 1962).

12. 341 U.S. 428 (1950).

Standard Oil Co. was incorporated, but had no office or place of business in the state of New Jersey except for a statutory registered office. The stocks and dividends were issued and held in other states and the last known addresses of the owners were chiefly in other states. In allowing the state of incorporation of the debtor to escheat the property, the Court said that the full faith and credit clause bars any double escheat and that a valid judgment would bar and thereby protect Standard Oil Co. from multiple claims by missing shareholders.¹³ The Court in handing down this decision did not really attempt to decide as between states who had the right to escheat intangible property as no other state was making a claim to the property involved in this case.¹⁴ Thus, the decision as to conflicting claims between states was left for a later decision. In the dissenting opinion Justice Frankfurter assessed this problem and the probable effect of the principal case by stating that: "The constitution ought not to be placed in an unseemly light by suggesting that the constitutional rights of the several states depend on, and are terminated by, a race of diligence."¹⁵ As it was held in *Western Union Tel. Co. v. Comm. of Pennsylvania*¹⁶ that the same property cannot be constitutionally escheated by more than one state, it would indeed seem that the first state to escheat the property in question would be the successful state.

In the *Western Union* case the property involved was unclaimed money orders bought in Pennsylvania from the New York corporation. The Court held that Pennsylvania had no power to render a judgment of escheat which would bar New York or any other state from escheating the same property¹⁷ and said that this problem would have to be settled by the states in an action under the Court's original jurisdiction.¹⁸

In earlier decisions it had been argued that the state having the most "contacts" with the debt should be allowed to escheat the property.¹⁹ This concept would not only involve the problem of establishing a situs for the intangible property, but it would also require "contacts" to be defined and the degree of "contacts" would have to be compared.

In *Texas v. New Jersey*,²⁰ Pennsylvania, the state where the debtor had their principal offices, claimed the right to escheat the abandoned property since the debtor had probably benefited most by this state's laws and economy. This case involved claims by states representing each of the theories and was brought under

13. *Id.* at 442, 443.

14. *Id.* at 443.

15. *Id.* at 444.

16. 368 U.S. 71 (1961).

17. *Id.* at 76, 77.

18. U.S. CONST. Art. IV, § 2.

19. *Cf. supra* note 10.

20. *Supra* note 4.

the Supreme Court's original jurisdiction to finally settle the claim between the states. Sun Oil Co., a New Jersey Corporation with its principal offices in Pennsylvania, held small debts totalling \$26,461.65 which it owed for periods from seven to 40 years to 1,730 small creditors who never claimed the funds. Florida as well as Pennsylvania, Texas and New Jersey made claims to the funds as some of the creditors' last known addresses were in Florida. New Jersey claimed as the state of incorporation, and Texas claimed as the debts were evidenced on the books of Sun Oil Co. offices in Texas. The Court held that only the state of the creditor's last known address, as shown by the debtor's records, may claim an abandoned obligation through the process of escheat.²¹

In deciding this original suit the Court was looking for a workable standard for "ease of administration and equity."²² The Court felt that to allow the state where the firm's principal offices are located to escheat the intangible property would be to turn a debt into an asset. Also they felt this would not be a workable rule as the question of where the main office is located would result in disputes over a question of fact.

In not allowing New Jersey, the state of Sun's incorporation, to escheat the property the Court said "... and it seems to us that in deciding a question which should be determined primarily on principles of fairness, it would too greatly exhalt a minor factor to permit escheat of obligations incurred all over the country by the state in which the debtor happened to incorporate itself."²³

In deciding in favor of the state of the creditor's last known address as shown by the debtor's books and records, the Court has attempted to set down a rule which will serve in all factual situations. It should also be noted this rule would give no special advantage to a state whose liberal incorporation laws are attractive to promotors of incorporations. This decision is in accord with the Restatement's view as to which state should receive intangibles where the deceased is domiciled in a state other than where the intangibles are held.²⁴

The Court also settled two other questions. They were who would escheat property (1) where there was no record of address and (2) where the last known address is in a state which does not provide for escheat of the property in question. The Court stated that in both situations the state of the corporate domicile could escheat provided they hold the property so that the proper state could later escheat if an address was found or if a proper law was

21. *Id.* at 681.

22. *Id.* at 683.

23. *Id.* at 680.

24. "In the absence of any person who, according to the law of the state determining the distribution of moveables, is entitled to succeed thereto, the chattels of an intestate and the proceeds of claims owned by him pass to the state in which they are administered." RESTATEMENT, CONFLICT OF LAWS § 309.

enacted.²⁵ This form of statute would be custodial in nature as opposed to the regular form of escheat statutes. In the case of an escheat statute, title vests immediately in the state and the rights of any previous owners are cut off.²⁶ With the custodial type statute, the state holds the property in its custody until subsequently claimed by a rightful owner.²⁷

THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY

The Uniform Disposition of Unclaimed Property Act which has been adopted in twelve states²⁸ was drafted by the National Conference of Commissioners in 1954 and seems to have been drafted most favorably in two areas. The Act is custodial in nature and attempts to solve the problem of multiple claims.²⁹ The Act adopts the view that if the state of a creditor's last known address has escheat laws that state should have priority in escheating the property.³⁰ Otherwise another state may escheat the property and hold it for the state of the creditor's last known address.³¹ The procedure is similar to the rule set down in *Texas v. New Jersey*.³²

The scope of the property and holders reached by states adopting the Uniform Act is indicated by reference to sections two through nine of the Uniform Act. Section two provides for the reporting of dormant, inactive, and unclaimed accounts, dividends, checks, and other funds held by banking or financial organizations. The remaining sections apply to (a) unclaimed funds held by life insurance companies,³³ (b) deposits and refunds held by utilities,³⁴ (c) undistributed dividends and distributions of business associations,³⁵ (d) property held in the course of dissolution by business associations and banking or financial organizations,³⁶ (e) property held by fiduciaries,³⁷ and (f) property held by state courts and public officers.³⁸ A provision is also provided to cover all other persons holding unclaimed property which they accumulated in the ordinary course of their business.³⁹

In each case the property is declared abandoned if after seven years the property is unclaimed, if the owner is not known, or if it

25. *Texas v. New Jersey*, *supra* note 4, at 682.

26. *E.g.*, *Semrad v. Semrad*, 170 Neb. 911, 104 N.W.2d 338 (1960); *Delaney v. State*, 42 N.D. 630, 174 N.W. 290 (1919).

27. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT (hereinafter cited as U.D.U.P.A.) §§ 14, 19.

28. ARIZ. REV. STAT. ANN. §§ 44-351 to 44-378 (1956); CAL. ANN. CODE CIV. PROC. §§ 1500-27 (Supp. 1965); FLA. STAT. §§ 717.01-717.30 (1963); IDAHO CODE ANN. §§ 14-501 to 14-530 (Supp. 1965); ILL. ANN. STAT. ch. 141 §§ 101-30 (Smith-Hurd 1964); MONT. REV. CODES ANN. §§ 67-2201 to 67-2230 (Supp. 1965); N.M. STAT. ANN. §§ 22-22-1 to -29 (Supp. 1965); ORE. STAT. §§ 98,302-98,436 (Supp. 1963); UTAH CODE ANN. §§ 78-44-1 to 78-44-29 (Supp. 1965); VT. STAT. ANN. tit. 27 §§ 1208-1236 (Supp. 1965); VA. CODE ANN. 55-210.1 to 55-210.29 (Supp. 1965); WASH. REV. CODE ANN. §§ 63.28.070-63.28.920 (1961).

29. U.D.U.P.A. § 10.

30. *Ibid.*

31. *Ibid.*

32. 379 U.S. 674 (1965).

33. U.D.U.P.A. § 3.

34. U.D.U.P.A. § 4.

35. U.D.U.P.A. § 5.

36. U.D.U.P.A. § 6.

37. U.D.U.P.A. § 7.

38. U.D.U.P.A. § 8.

39. U.D.U.P.A. § 9.

remains inactive. The holder is then required to report that the property is abandoned and turn it over to the state treasurer.⁴⁰ It was held in *Metropolitan Insurance Co. v. Knight*⁴¹ that provisions similar to the Uniform Act requiring reporting and depositing of the property with the state were unconstitutional as applying to property held by a New York insurance company doing business in Illinois because the Act⁴² contained no provisions for reimbursing the holder if he were compelled to pay twice. The Illinois Act was amended in 1963⁴³ to remedy this situation, but since the *Texas* case⁴⁴ the Uniform Act would seem satisfactory as it stands.

The Uniform Act further provides that the running of a statute of limitations shall not prevent money or property from being presumed abandoned property nor affect the duty to report or deliver the property to the state treasurer.⁴⁵ Some courts have held that the defense of a statute of limitations creates a vested right and in that case it cannot be taken away by the Uniform Act.⁴⁶ Each state should consider its own law and determine if their statute of limitations may be lifted. This problem may be circumvented by revising Section 16 of the Uniform Act so that the period required to run is shorter than the period of limitation.⁴⁷ It should also be noted that in many cases the running of the statute of limitation will not be a problem because it may not run against a fiduciary⁴⁸ or a demand may be required to be made before the statute begins to run.⁴⁹ Furthermore many statutes may not run during the period of inactivity which is required for the property to become abandoned. The states also have the choice of making the statute a defense to any action.⁵⁰

Two alternatives would seem to be open for the states. Federal legislation⁵¹ might establish uniform escheat laws, but this will probably not come about as many states have adopted proper legislation⁵² and court decisions such as the *Texas* case defines well the requirements for proper legislation. The second alternative would be for the states to adopt the Uniform Disposition of Abandoned

40. U.D.U.P.A. § 11.

41. 210 F. Supp. 78 (S.D. Ill. 1962).

42. ILL. ANN. STAT. ch. 141, §§ 101-130 (Smith-Hurd 1964).

43. ILL. ANN. STAT. ch. 141, §§ 114 & 118 (Smith-Hurd 1964).

44. *Texas v. New Jersey*, *supra* note 32.

45. U.D.U.P.A. § 16.

46. *Eingartner v. Illinois Steel Co.*, 103 Wis. 373, 79 N.W. 433 (1899); *McCracken County v. Mercantile Trust Co.*, 84 Ky. 344, 1 S.W. 585 (1886). By the great weight of authority, so far as concerns the title to real property or personal property, the bar of the statute cannot be removed by the legislature. This may not be true for actions in tort. See *Campbell v. Holt*, 115 U.S. 620 (1885) which holds that the legislature had the power to remove the bar of the statute of limitations, distinguishing actions relating to the title to real or personal property.

47. N.J. REV. STAT. §§ 2A:37-29 to -44 (1952). New Jersey provides that property will be declared abandoned after five years and will be delivered to the custody of the state which will escheat the property after two years of custody. Thus a statute of limitations with a period of five years or more will not be a defense to an escheat action.

48. *State v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950).

49. U.C.C. § 3-122 (2).

50. KY. REV. STAT. § 393.100 (1949).

51. See "Federal Act to Resolve Conflicting State Claims to Abandoned Property", 1 Harv. J. on Legislation 51.

52. *Supra* note 28.

Property Act as its characteristics best fit the requirements of cases involving abandoned intangible property.

NORTH DAKOTA'S ESCHEAT STATUTES

It is desirable for North Dakota to assess its escheat statutes and modify them to take advantage of this source of non-tax revenue. At present, North Dakota has laws to escheat property, real or personal, which is within the state.⁵³ Chapter 30-25 of the North Dakota code provides for the escheat and vesting in the state title to all property which is owned by an intestate and if no person can be found to succeed to the property. A period of six years is provided before title vests in the state, and proper procedure is provided for the escheat proceedings.⁵⁴ North Dakota has also provided that personal property situated in North Dakota will follow its owner and is governed by the law of his domicile.⁵⁵ In the case of *In Re Nolan*⁵⁶ California attempted to escheat intangible property left in the state by a person who died domiciled in Montana without heirs. California had adopted the statute that the property was to follow the owner.⁵⁷ In reversing a decree of escheat of the personalty to the state of California, the appellate court held that, assuming without deciding that the situs of the property was in California, the general escheat provisions of California law did not purport to deal with the personal property of non-residents; and the distribution, under the above statute, would be governed by the law of Montana.⁵⁸ This decision combined with the decision of the Texas case⁵⁹ clearly shows that North Dakota could not attempt to escheat a deceased non-resident's intangibles found in the state.

Section 54-01-02 is inadequate as relating to abandoned property found in the state because there is no enabling law empowering the state to meet due process requirements in escheating property. In comparing this section with the statute enabling the state to escheat where there are no heirs,⁶⁰ it would seem that 54-01-02 is lacking because it does not provide for an action by the Attorney General which is required to vest the title of unowned property in the state.⁶¹

There is a total absence of any laws allowing the state to escheat abandoned or unclaimed personal property located outside the state which might have at one time belonged to a person whose last known address was in North Dakota.

53. N.D. CENT. CODE § 54-01-02 (1960).

54. N.D. CENT. CODE §§ 30-25-01 to - 13 (1960).

55. N.D. CENT. CODE § 47-07-01 (1960).

56. 135 Cal. App.2d 16, 286 P.2d 899 (1955): 50 A.L.R.2d 1369.

57. CAL. ANN. CODE CIV. PROC. § 946 (1954).

58. *In Re Nolan*, *supra*, note 56, at 902; The RESTATEMENT OF CONFLICTS OF LAW § 309 states that in absence of any person who, according to the law of the state determining the distribution of moveables, is entitled to succeed thereto, the goods, tangible or intangible, of an intestate pass to the state in which they are administered.

59. *Texas v. New Jersey*, *supra* note 32.

60. N.D. CENT. CODE § 56-01-14 (1960).

61. *Delaney v. State*, 42 N.D. 630, 174 N.W. 290 (1919). This case holds that the state does not take title by succession or as last heir, but an escheat action is required to vest title in the state.

It should also be noted that if any act is adopted in the future, it would have to comply with section 153 of the North Dakota Constitution. This section provides that all escheated property shall be credited to the permanent school fund. It is provided that property escheating to the state because of lack of heirs will be placed in the common school fund,⁶² but in other instances statutes provide that escheating funds be used in other ways.⁶³ There is little doubt that those escheat statutes which do not provide that the escheated property be credited to the permanent school fund are unconstitutional.

CONCLUSION:

North Dakota's escheat statutes need supplementing to provide for the escheating of intangible personal property not located in North Dakota. The escheat statutes now existing would not necessarily have to be revised as they apply to real and personal property located in North Dakota. The statutes covering intangible personal property should be in detail to give notice to persons and organizations who might be holding unclaimed property if they are to be required to report such property to the state. Certain administrative details must be solved such as what state office will handle the funds and an account would have to be established for the possibility of recovery where a person desires to recover unclaimed property. It would seem that the Uniform Act was a model established with much foresight, and any legislation should follow this model.

EDMOND REES

62. N.D. CENT. CODE § 56-01-18 (Supp. 1965).

63. N.D. CENT. CODE §§ 6-08-24.1 (Supp. 1963), 37-15-16 & 17, 36-22-08, 54-01-02.3 (1960). Each statute provides that money from property passing to the state will be placed in funds other than the common school fund.